

and underwriting analysis to confirm that the applicant is still eligible.

(b) *Repayment period.* The term of the loan may not exceed 30 years. Adjustable rate mortgages, balloon term mortgages or mortgages requiring prepayment penalties are ineligible terms.

(c) *Repayment schedule.* Amortized payments will be due and payable monthly.

(d) *Negative amortization.* The loan note must not provide for interest on interest.

**§ 3555.105 Combination construction and permanent loans.**

Guarantees of combination construction and permanent loans are subject to the following conditions:

(a) *Lender requirements.* In addition to other lender requirements of this part, lenders seeking guarantees of combination construction and permanent loans must:

(1) Have two or more years experience making and administering construction loans.

(2) Submit an executed construction contract with each loan application package.

(3) Review and approve construction contractors or builders. The lender will conduct due diligence investigations to determine that the contractor or builder meets the minimum requirements in paragraph (b) of this section. Evidence of the contractor or builder's compliance must be made available by the lender upon request of the Agency.

(4) Close the loan prior to the start of construction with proceeds disbursed to cover the cost of, or balance owed on, the land and the balance into escrow.

(5) Pay out monies from escrow to the builder during construction. The lender must obtain written approval from the borrower before each draw payment is provided to the builder. The borrower and lender are jointly responsible for approving disbursements during the construction phase. The lender must ensure that the appropriate work has been completed prior to releasing each draw. The Agency may require the lender to submit a draw and disbursement ledger for any loan guarantee upon request.

(6) Obtain documentation that confirms the construction of the subject property is complete.

(b) *Contractor or builder requirements.* Contractors or builders of homes financed with guaranteed combination construction and permanent loans must at least have:

(1) Two or more years experience building or constructing all aspects of single family dwellings similar to the type of project being proposed;

(2) State-issued construction or contractor licenses, as required by State or local law;

(3) Insurance for commercial general liability of at least \$500,000;

(4) Acceptable credit histories free of judgments, collections, or liens related to previous projects the contractor was involved with in the past;

(5) No criminal history based on a criminal background check conducted by the lender;

(6) Limited to 25 units per year unless approved by the Agency; and

(7) Contractors or builders who are constructing their own residence are ineligible.

(c) *Use of loan funds.* (1) The loan is to finance the construction and purchase of a single family housing residence. Condominiums and manufactured homes are ineligible for combination construction and permanent loans.

(2) The loan amount may include:

(i) The price of the lot.

(ii) Reasonable and customary construction costs related to the construction administration, such as architectural and engineering fees, building permits and fees, surveys, title updates, contingency reserves, not exceeding a percentage specified by the Agency of the cost of construction, draw control and inspection fees, builder's risk insurance or course of construction insurance, and landscaping costs;

(iii) Reasonable and customary closing costs as defined at § 3555.101; and

(3) Funds remaining after full disbursement of construction costs will be applied by the lender as a principal payment. Borrowers are not to receive funds after closing except that the borrower may receive funds remaining from certain unused prepaid expenses if

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the borrower used personal, non-loan funds to pay those expenses.

(d) *Terms.* The following terms apply to guarantees of combination construction and permanent loans:

(1) The interest rate for the construction and permanent loan will be established in accordance with §3555.104 at the time the rate is locked, which must occur prior to closing.

(2) The fair market value of the proposed property to be constructed will be used to establish the maximum loan amount.

(3) Annual guarantee fees will begin in the month immediately following loan closing and will not be affected by loan reamortization following the completion of construction. Lenders may fund a lender imposed escrow account for borrower payment of the annual fee in accordance with §3555.101(b)(6)(xi), as an eligible loan purpose, provided the market value of the property is not exceeded.

(4) Interest on the construction loan is payable monthly either directly from the borrower or indirectly drawn from an established interest reserve. Real estate taxes and property insurance due during the construction period may also be paid using the same draw process. The annual fee will be due and payable from the lender on the 1st of the month following the anniversary date the construction to permanent loan closed.

(5) Initial payment of the regularly scheduled (amortized) principal and interest payment may be postponed up to one year, if necessary, based upon the construction period. Local conditions and the proposed construction contract may dictate the term.

(6) The loan will be modified and re-amortized to achieve full repayment within its remaining term once construction is complete. Within a reasonable time, as specified by the Agency, after the final inspection, the borrower will begin making regularly scheduled (amortized) principal and interest payments once the loan is re-amortized.

(e) *Mortgage file documentation.* Standard industry credit and verification documents may be utilized when processing and closing the loan and must be dated within a reasonable time, specified by the Agency, of the

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closing in order to be considered valid. In addition to documentation noted at §3555.202(a), lenders must obtain and retain evidence:

(1) The actual cost to construct the subject dwelling;

(2) The acquisition, transfer of ownership, and/or ownership of land;

(3) Certification of construction completion and that construction costs have been fully drawn;

(4) Closing costs;

(5) Certification that property is free and clear of all other liens after conversion to permanent loan;

(6) Required inspections and warranties; and

(7) Loan modification agreement when construction is complete confirming the existence of the permanent loan and the amortizing interest rate on the loan.

(f) *Loan Note Guarantee.* The Loan Note Guarantee will be issued after closing of the construction loan without waiting for complete construction of the subject property upon:

(1) Request by the approved lender;

(2) The lender's submission of the closing documentation acceptable to Rural Development demonstrating that the loan was properly closed;

(3) Payment of the guarantee fee; and

(4) The lender's compliance with other requirements under §3555.107.

(g) *Unplanned changes during construction.* Should an unplanned change occur with the borrower or contractor preventing completion of construction, the lender remains responsible for completion of improvements satisfactory to Rural Development. The loan will be serviced in accordance with subparts F and G of this part.

(h) *Reservation of funding.* Rural Development reserves the right to limit the number or amount of loans guaranteed under this section based on market conditions and other factors it considers appropriate, such as loan and portfolio performance.

## § 3555.106 [Reserved]

## § 3555.107 Application for and issuance of the loan guarantee.

(a) *Processing of applications.* Except as provided in this section, Rural Development will process loan guarantee